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LITTLE AND GEAR

Both Held Sessions
in Circuit Court
Yesterday.

**MAGOON IS
AGAIN SUED**

His Administration of Spendthrift
Trust Attacked—Instructions
Coming in 1000 Acre Case.

Two circuit courts were in session yesterday in the Judiciary building, besides the Federal court below. Neither of the circuit courts were overburdened with work during the day, and were in session only at irregular intervals.

Judge Gilbert F. Little of Hilo occupied the bench yesterday morning with Judge Gear, while the latter read an order signed by Associate Justice Perry calling Judge Little to preside in cases wherein Judge Gear is disqualified. The court further announced that there could be no special term of court to follow the August term, as he had discovered a section of the law which left the option of calling special terms of circuit court to the Chief Justice. Judge Gear evidently was not pleased with the arrangement, and as the Chief Justice was not in the Territory he saw no way by which he could further relieve the congested condition of the docket.

"For some reasons the lawmakers of Hawaii framed the statutes with an idea that the circuit court was a baby requiring the presence of the Supreme Court at all times," remarked Judge Gear. "I don't think that with two members of the court gone, anything can be done, and there is no way by which a special term could be called."

The attorneys generally are of the opinion that Judge Perry can act as Chief Justice during the absence of the remaining members of the court, but Judge Gear does not take that view of the situation, and after the conclusion of the present term, there will be no session until November. Judge Little is of the opinion that Judge Perry could order a special term.

NOLLE PROSEQUI ENTERED.

In the case of Matzuo, a Jap charged with aiding and abetting unlawful intercourse, a nolle prosequi was entered by Deputy Attorney General Cathcart because of the disappearance of the witnesses. The prisoner was represented by Attorney Brooks, and when the case was dismissed there being no interpreter present, the court asked Mr. Brooks if he was not able to speak sufficient Japanese to make the prisoner understand what had been done. The attorney answered that he knew enough Japanese for that, and led the defendant from the court room. Once outside, the attorney caught the prisoner by the shoulders, waved his hands in the air once or twice, and then with a loudly whispered "Pau" gave him a gentle shove towards the stairs. The Jap understood his attorney's lucid interpretation, and waited for no second invitation. Nolle prosequi was also entered in the cases of two Chinese charged with gambling, both of whom withdrew their appeals.

DUNNE HEARS FROM WASHINGTON.

The case of J. B. Atherton vs. The Wahiawa Sugar Co., which was set for trial yesterday, was again postponed till Saturday upon the request of Deputy United States Attorney Dunne, who had intervened on behalf of the United States. This is the case in which it was claimed that the Organic Act prohibiting the holding of over one thousand acres by one corporation was being violated. Judge Gear called the attention of Mr. Dunne to the fact at the time, and then postponed the hearing for thirty days until he could communicate with Washington. When the case was called up yesterday Mr. Dunne asked for further time, and in support of his plea read the following telegram:

Washington, August 20.

J. J. Dunne, Acting U. S. Attorney, Honolulu, Hawaii.

Replying to your letter of 3rd instant have sent you full instructions by today's mail.

P. C. KNOX,

Attorney General.

Judge Silliman objected to a further continuance claiming that valuable interests were at stake, and it was understood at the time of the former continuance that the United States should have had thirty days time. He said he had received advices from private sources that the instructions conveyed in the letter would be simply to request the United States attorney not to intervene. Mr. Dunne replied that he could not take any action on rumors, and could simply abide by what the attorney general had telegraphed. The court remarked that it was too bad that the attorney general shouldn't have added another word, so that he might know what the instructions were. Mr. Silliman said that his information had come from Washington through parties who had been told by Attorney General Knox, but he stated that he could reveal his source of information only to the court, secretly. The court replied that in view of the fact that the instructions would surely arrive by the Gaelic he could not start the trial until they were received, and refused to even consider the suggestion that he might proceed immediately. The hearing was then set for Saturday morning, by which time it is expected that the instruc-

tions will have been received by Mr. Dunne.

In the afternoon Judge Gear was occupied with the hearing of a Chinese land case, which will be taken up again this morning.

JUDGE LITTLE'S COURT.

Judge Little held a brief session of court yesterday morning, and also announced his intention of clearing the calendar of cases in which Judge Gear is disqualified. These cases are as follows:

P. Ahuni vs. Annie Waller et al., J. P. Mendonca vs. Geo. Markham, Rosamond Naylor vs. Orpheum Co., Mace Bonville vs. Orpheum Co., Honolulu Investment Co. vs. M. Koi Unaua, Oki & Oki Co. vs. Wilson & Whitehouse et al., J. L. Howland vs. Byron Co. Clark, Eugene Avery vs. W. C. King, Henry Zerbe vs. Honolulu Tobacco Co., E. O. Hall & Son vs. Palaw Valley and Upland Development Association, David Dayton, guardian, vs. Helen K. Roland et al., Honolulu Investment Co. vs. Helen K. Roland et al., John Cook vs. E. Coit Hobron, Hawaiian Trust Co. vs. Benton, John Loeffler vs. Palama Co-operative Grocery Co., T. W. Hobron vs. Charles I. Helm, Robert vs. Kauai, E. H. F. Wolter vs. F. H. Redward, G. F. Gouveia vs. T. R. Walker et al., trustees, Rita C. Tewksbury vs. Irving G. Tewksbury.

WILL KEEP THINGS HUMMING.

Judge Little announced a program yesterday morning which will keep things humming during the twelve days he will hold court here. He told the attorneys that he intended to hold three sessions, one from 9 to 12 a. m., then from 1:30 to 6 p. m., and a night session from 7 to midnight and later if necessary. Some of the attorneys did not relish the idea, and didn't think the court could stand the strain, but he stated that there would be no trouble on his part if the attorneys and jury did their share of the work.

The case of Ahuni vs. Annie Waller et al., is set for this morning before Judge Little. Judge Gear will hear criminal cases.

MAGOON SUED AGAIN.

J. Alfred Magoon is made defendant in another suit to terminate a spendthrift trust wherein he is guardian, and allegations made are very similar to those made in the Love case. The petitioner is Rebecca Panee Hanaku. Magoon is cited to appear September 18th and show cause why the trust should not be terminated. The following are the allegations made in the petition:

Your petitioner, Rebecca Panee, formerly Rebecca Panee Humeke, respectfully shows to your honor:

That on the 15th day of April, 1893, J. A. Magoon, Esq., who had previously to that date acted not as trustee, but merely as agent for your petitioner, in collecting rents and interest, and disbursing the same, represented to your petitioner that it would be greatly to her interest to have himself made by the court guardian of her estate and person, and your petitioner, being then troubled in her domestic relations, and not living with her husband, Humeke, and having confidence in said Magoon, consented to have him appointed her guardian.

Your petitioner avers that she did not understand from the petition of Magoon made to this court in this proceeding on the 13th day of April, 1893, that she was accused of drunkenness or of anything except a disposition to make extravagant expenditures, and that when your petitioner signed and verified her consent to the granting of said petition of said Magoon, she did not then or ever understand until very recently that she was charged therein with being a drunkard. And your petitioner avers that she was not then and has never been a drunkard, either within the meaning of Section 1965 of the Civil Laws of Hawaii Territory or at all.

Your petitioner avers that at the hearing of said application of April 13th, 1893, before Judge Whiting, no testimony whatever was given except that of J. Alfred Magoon, as appears in the records and files herein, to which reference is hereby made. And your petitioner further avers that in answering at said hearing the inquiry of the Judge as to whether the evidence then given by Magoon was correct, she replied in the affirmative, with the understanding and belief that the term "spendthrift" as used by Mr. Magoon, imputed to her only a disposition on her part to live beyond her income, but that she did not agree then or ever that she was a spendthrift in the legal sense, that is to say, that she was "by excessive drinking, gaming, idleness, or debauchery of any kind," so spending, wasting, or lessening her estate as to expose herself or her family to want or suffering.

Your petitioner further avers that continuing to have full confidence in said Magoon, she accepted his statement that the meagre allowance of \$12 per week given her by him was all that could be afforded, and she has therefore accepted such sum, and greatly to her discomfort has endeavored to live within the same.

Your petitioner further avers that on the 13th day of April, 1893, at a time when petitioner was an inmate of the cholera hospital and in danger of death, she, at the earnest solicitation and invitation of said Magoon, signed and acknowledged a will drawn by said Magoon, in which Magoon made himself heir or devisee of her property.

Your petitioner further avers that she has no present knowledge of the status of her property, her accounts with said Magoon, and the reason that said Magoon has filed no account with the Clerk of this Court since 1893; but your petitioner, on information and belief, avers that said estate is of the value of thirty thousand dollars, and that the income from the same is or could with prudent management be made to yield as much as \$500 per annum.

Your petitioner shows that said J. A. Magoon made repeated efforts to seduce your petitioner (as a home for your petitioner) for the sum of two thousand dollars, a piece of property in Honolulu owned by said Magoon, but your petitioner not believing that such transaction would be to her advantage, refused to accept the same.

Your petitioner further shows that she has a just claim for property belonging to her of value of two thousand dollars, destroyed by fire, by action of the Board of Health; that petitioner does not know whether said Magoon has filed a claim for the same, but believes that he may have neglected to do so.

That your petitioner has no children, no husband, no father nor mother, no brothers nor sisters, and no kindred, except collateral, that she is not and was a drunkard or idler, and that whatever tendency she may have had in years gone to expend more than her income has been thoroughly eradicated from her system by the drastic economic discipline to which she has been subjected by Mr. Magoon.

Your petitioner avers that she is sober and sensible and competent to manage her own estate and expend prudently the income thereof; that she needs no guardian of her property or her person, and if she should at any time feel such need she will seek it elsewhere than by virtue of a spendthrift trust and through another person than J. A. Magoon, Esq. Petitioner avers that she desires to be restored to the possession and control of her own property and permitted to receive and expend the revenue thereof sans Magoon.

Wherefore your petitioner prays that

the spendthrift trust herein be now terminated and her guardian, J. A. Magoon, be required to deliver and turn over to petitioner all securities, moneys, property and papers belonging to your petitioner, and to render a full and true account, that said guardian be discharged, and for such other, further and different relief as may be just and equitable.

And your petitioner will ever pray, etc.

REBECCA PANEE,
THOMAS FITCH and
C. C. BITTING,
Attorneys for Petitioner.

COURT NOTES.

W. O. Smith was appointed guardian of Annie K. Smith and L. N. Smith.

The seventh annual report of W. F. Allen, guardian of Oppergelt minors, was filed yesterday. It shows a balance on hand of \$107.91.

In the matter of the estate of Chas. Roesch, Rev. W. K. Azbill was appointed administrator. The estate consists of but \$300, and there are six minor heirs.

An order was made yesterday appointing Miria Knawa guardian of George and Robert Kaawa, and that the amount of \$347.80 now on deposit in the bank and the Board of Health be paid into court.

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Tel. 321.

COMMISSIONER'S SALE.

— OF —

Several Valuable Pieces
of Real Estate

AT AUCTION

BY VIRTUE OF AN ORDER ISSUED out of the Circuit Court of the First Judicial Circuit, Hon. George D. Gear presiding, in a cause at chambers entitled Adelaide Schlieff et al. vs. Joseph Clarke et al., equity division, No. 1208, the undersigned will sell at public auction to the highest bidder, subject to confirmation by said court, on

Saturday, September 14, 1901.

AT 12 O'CLOCK NOON.

At the mauka entrance to the Judiciary building in said Honolulu, Oahu, the following described lands and the improvements thereon, to wit:

1. That certain piece or parcel of land situate on the northeast corner of King and Punchbowl streets, in Honolulu, Oahu, Territory of Hawaii, and bounded and described as follows:

Commencing at north corner and running

South 29° east 75 links, along Keole-

wa's; thence

South 48° 30' west 389 links, along

Hana Haalilo's; thence

North 67° west 37 links, along King

street; thence

North 42° east 342 links, along

Punchbowl street; thence to place of

commencement. Area 1.5 acres. The

same being R. P. 5705 of L. C. A. 24 to

Honokaaup, and being the same conveyed

to the said Joseph Lazarus by

Mrs. D. K. Fyfe and D. K. Fyfe, her

husband, as per deed dated November

3, 1883, and recorded in libel 86, pages

104-105.

2. Royal Patent Grant No. 3506. That

certain piece or parcel of land situate

at the south slope of Punchbowl hill,

Honolulu, Island of Oahu, and described

as follows:

Lot No. 592—Beginning at a point on

mauka side of Kinau street, and 200

feet westerly from iron pin at west

angle of Boardman's premises, thence

the boundary runs by true bearings:

North 21° 12' east 286 feet along lots

503 and 505;

South 81° 34' west 115 5-100 feet along

Lunalilo street;

South 21° 12' west 229 feet along lot

501.

South 68° 48' east 100 feet along Kinau

street to initial point.

Area 25,750 square feet.

3. Two lots, Nos. 117 and 118, on

Beretania street, being lots or parcels

of land described in Royal Patent No.

284, and described as follows:

Commencing at the makai south corner

of lot No. 116 (T. Metcalf's) and

running

South 78° 15' east 200 feet along mauka

street to west corner of lot No. 119

(R. H. Rowlin's); thence

North 11° 45' east 150 feet along lot

No. 119 to its mauka north corner;

thence

North 78° 15' west 200 feet to mauka

east corner of lot No. 116; thence

South 11° 45' west 150 feet along lot

No. 116 to place of commencement,

containing 833 fathoms and 12 feet,

more or less. Less what has since

been deeded to the wife. (This lot is

on the Waikiki side of lot now occu-

pied by Mrs. A. L. King.)

4. That certain piece or parcel of

land situate at the mauka corner of

Punchbowl street and Palace Walk, in

said Honolulu, described as follows:

Apapa 1. Commencing at a point on

Punchbowl street; being north corner

of Palace Walk and Punchbowl street,

which is the southwest corner of this

lot; thence

North 43° east .96 chains along

Punchbowl street; thence

North 44° west 3.17 chains along lot

of Keliiahonui; thence

South 37° west 1.09 chains along gov-

ernment to Palace Walk, along lot

of French; thence along same to place of

commencement. Area 1 road 10 perches;

R. P. No. 4514, L. C. A. 273, to G.

Laanui.

5. That piece or parcel of land at the

west corner of Maunakea and Pauahi

streets, Lot "B" and Lot "C."

Beginning at a point on the north-

west side of Maunakea street, 35.0 feet

makai of the corner of Pauahi street,

and running

South 57° 10' west true 61.5 feet along

Maunakea street;

North 32° 50' west true 42.0 feet

along Malla Kahal lot;

North 57° 10' east true 62.0 feet along

Mutch lot;

South 32° 22' east true 42.0 feet along